

Denver Journal of International Law & Policy

Volume 25
Number 1 *Fall*

Article 12

May 2020

Mass Expulsion in Modern International Law and Practice

Julie Jackson

Follow this and additional works at: <https://digitalcommons.du.edu/djilp>

Recommended Citation

Mass Expulsion in Modern International Law and Practice, 25 Denv. J. Int'l L. & Pol'y 205 (1996).

This Book Note is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Denver Journal of International Law & Policy by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

Book Notes

JEAN-MARIE HENCKAERTS, *MASS EXPULSION IN MODERN INTERNATIONAL LAW AND PRACTICE*; Martinus Nijhoff Publishers; The Hague, Netherlands (1995); (\$105.00); ISBN 90-411-0072-5; 257 pp. (hardcover).

Throughout history, groups have been forced to leave their place of residence as a result of direct or indirect action taken by the State or quasi-private groups acting without government involvement. Recent events in Rwanda, the West Bank and the former Yugoslavia, evidence the problems resulting from mass expulsions. *Mass Expulsion in Modern International Law and Practice* focuses on mass expulsions which have occurred in the past fifty years, and presents a comprehensive list of guidelines to assist decision makers in the future.

The first section examines direct methods of expelling aliens, migrant workers, nationals, permanent residents, stateless persons, and refugees against the legality of the State's action. Next, the book considers indirect methods of implementing mass expulsion and the timing of mass expulsions in relation to war and occupation. The book concludes with an overview of remedies, enforcement, and prevention.

The book begins by addressing the mass expulsion of persons who are aliens. After analyzing several regional human rights conventions in light of customary international law, the author concludes that international law prohibits mass expulsion. While the text of the European Convention on Human Rights, the American Convention on Human Rights or the African Charter on Human and People's Rights could not be used to prohibit all mass expulsions, customary doctrines prohibiting discrimination and arbitrariness, render these conventions effective in prohibiting mass expulsion.

The book then examines the mass expulsion of migrant workers. Since most immigration occurs for economic reasons, the author contends that migrant workers comprise the "most important category of aliens". After evaluating several International Labor Organization conventions and situations existing in Ghana in the late 1960's, Nigeria in 1983 and 1985, and the Dominican Republic in 1991, the author concludes that the migrant worker possesses little protection against expulsion, even from a state where he has worked for many years.

The book then considers the mass expulsion of groups with special protections, such as nationals, stateless persons, and refugees as well as mass denaturalization as a ground for mass expulsion. Because expulsion of these groups are carried out in a way which does not provide for individualized determinations and are based upon the groups' nationality, ethnicity, religion or race, the author concludes that these expulsions violate international law.

Henckaerts, who supports a broad definition of mass expulsion, next turns his attention to indirect methods of mass expulsion. According to the broad definition, activities other than official, direct expulsion effectuated through expulsion orders or decrees, including acts of persecution, violations of human rights, discriminatory treatment and various kinds of pressure can cause mass expulsion. The author analyzes the use of economic incentives, voluntary return policies, and the population exchange as forms of indirect mass expulsion. Henckaerts surveys modern occurrences of population exchange and evaluates its' feasibility in the former Yugoslavia. When any type of voluntary population transfer occurs, the plan should be carefully monitored by the international community, well organized, and gradually implemented. *Mass Expulsion* argues that voluntary population transfer should be used only as a last resort, since peace will not occur "by alienating, but rather by uniting."

Next, Henckaerts discusses the relationship between mass expulsion and war. Mass expulsion of foreigners at the commencement of war, which is implicitly permitted by the Fourth Geneva Convention, must be performed in a humane manner, must offer the individual an opportunity to present their defense, and must provide the individual a reasonable time in which to leave. Post-war expulsion, as performed by the Allies to Germans from East Prussia, Pomerania, Silesia and other parts of Eastern Europe after World War II, raises the issue of the morality in implementing an program, which under other circumstances, would constitute a crime.

In the wars of Kuwait and the former Yugoslavia, the occupying power deported and transferred civilians. *Mass Expulsion* carefully traces the development of the law of war as it applies to mass expulsion. The deportation of Palestinians from the West Bank and the Gaza Strip is separately evaluated. Henckaerts considers the actions of Israel in light of international law and practical matters, using the situation to emphasize the point that population settlement or plantation policies eventually backfire.

The book concludes with a brief coverage of remedies, relief, prevention, and enforcement. Lack of coordination, the degree of strain on the receiving country, and the difficulty of enforcing claims against the expelling state, further complicate efforts to control and reduce the mass expulsion of individuals. Because countries which resort to mass expulsion are frequently unable to protect human rights, international

mechanisms offer an opportunity to enforce and perhaps prevent mass expulsion. Henckaerts concludes that the framework required to prohibit mass expulsions already exists, needing only the initiative of human rights experts, diplomats, U.N. representatives, and leaders worldwide to investigate when questionable situations arise.

Julie Jackson

JOHN WITTE, Jr. AND JOHAN D. VAN DER VYVER (Eds.), *RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE: RELIGIOUS PERSPECTIVES*; Martinus Nijhoff Publishers; The Hague, Netherlands (1996); (\$350.00); ISBN 90-411-0178 (Set of 2 volumes); 597 pp. (Vol. 1 hardcover); 670pp. (Vol. 2 hardcover).

This two volume collection contains forty essays examining the place of religious freedom, as it pertains to human rights, within historical and present day frameworks. The essays limit their scope to Judaism, Christianity and Islam and present a variety of human rights topics related to these religions in both a comparative and a case study method. As John Witte Jr. hopes, the books facilitate an understanding of what religious human rights mean through discussing various view points on the topic and attempts to "exorcise the demons of religious intolerance."

The authors of the essays include preeminent legal and religious scholars whose focus, especially in the first volume, breaks the topic down into three general areas: historical and theoretical inquiries that lay differing standards of rights; rights and the structure of religious communities and traditions; and inconsistencies of religious leadership in view of theoretical climate. Within these areas the authors give equal voice to the three religions and their respective interpretations of history, textual foundations, roles of women, and present day applications of religious human rights.

The second volume of the book focuses on the modern day, global application and interpretation of religious human rights. Found within all three religions is the concept of humans deriving all power and form from God, thereby creating personal freedoms derived from this equality. The essays detail a ground swell of support for the notion of religious autonomy, through the activities of the General Assembly and several non-governmental organizations, and attempt to justify a legal foundation within the international arena. The second volume takes on area studies that seek to discern the present day status of religious freedoms from the theoretical standard. The areas scrutinized for these individual case studies include: Middle East, Eastern Europe, Latin America, Africa, U.K., Central America, and the U.S.